



## Wrongful Death Cases

by John D. Whitaker

Wrongful death cases are probably the hardest cases I handle. There are a lot of reasons for this, but the primary reason is that, in order to do one of these cases, we must deal with the surviving family members. Generally, the family is very sad after losing someone they love, and they are angry because the death was preventable. Losing someone you love and depend upon can also be very frightening in terms of facing the future without someone you counted on every day. These very real and powerful emotions can turbo-charge the litigation process, and it is very important to be mindful of this energy as we move through the complicated process of trying to place a value on the life of a human being.

In Wyoming, wrongful death cases are authorized by statute. The statute allows compensation for the next of kin where the death was caused by a wrongful act, neglect or default of another person or entity. People die every day, and just because someone dies, it does not mean that the survivors have a wrongful death case. Only those cases where the death was caused by some type of wrongful conduct does the case become actionable.

Wrongful death cases are different than other types of personal injury cases because the damages recoverable are different. In the usual personal injury case, the damages are designed to compensate the injured person. In a wrongful death case, there is no way to compensate a deceased person.

It would be wonderful if we could ask our juries to place their hands on the deceased person and bring them back to life, but unfortunately that is not the way it works. The only way the law has to provide compensation is to award money damages. This is the part where it gets complicated. How do you place a value on a human life? Are all lives worth the same? Is a 40-year-old father of three small children worth more than, say, a 90-year-old grandmother or a three-year-old child? The moral answer to this question would probably be that all lives should be valued the same. Under Wyoming law however, a 40-year-old breadwinner



with small children would be expected to earn far more over his expected lifetime than a 90-year-old grandmother. A small child has no earning history and has no dependents so juries and insurance companies would generally agree that the 40-year-old father would be far more valuable in economic terms than an elderly person or a child.

These cases are also complicated because, under Wyoming law, the number of people that may have a valid claim for wrongful death include all of the people who would be entitled to inherit property from the deceased person. This would include spouses, children, parents, grandparents, aunts, uncles and cousins. We have had cases where a person is killed by some wrongful act and

a brother who had not spoken to the victim for 20 years shows up and claims that he is entitled to the same amount of money damages as the victim's spouse or one of his children. Wyoming law deals with this problem by limiting the damages to the loss of probable future companionship, society and comfort. The jury hears evidence on the quality of the relationship between the victim and the various claimants, and must decide what amount of money is fair compensation for each individual claimant, given the evidence. A child or spouse would usually have a much more valuable claim than an estranged brother. In fact, the jury could decide that the brother was not entitled to anything.

These claims must be brought by a personal representative who is appointed by the court. The personal representative is actually the one who files the suit for the benefit of all of the claimants. This entire process is supervised by the court, and any distribution to the claimants by the personal representative must be approved by the court.

A final complication of these cases is the two-year statute of limitations which requires that a wrongful death action be commenced within two years after the death of the deceased person. There are lots of exceptions to this rule, but if you think you may have a wrongful death case and have any questions about any of these issues, you should contact a lawyer immediately. These cases do not get better with age.

**The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at JDWTL@aol.com or by calling his office in Casper at 265-6204.**